



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

Release Number: **201211025**
Release Date: 3/16/2012
Date: December 22, 2011
UIL Code: 501.32-00
501.33-00

Contact Person:

Identification Number:

Contact Number:

Employer Identification Number:

Form Required To Be Filed:

Tax Years:

Dear

This is our final determination that you do not qualify for exemption from federal income tax as an organization described in Internal Revenue Code section 501(c)(3). Recently, we sent you a letter in response to your application that proposed an adverse determination. The letter explained the facts, law and rationale, and gave you 30 days to file a protest. Since we did not receive a protest within the requisite 30 days, the proposed adverse determination is now final.

Since you do not qualify for exemption as an organization described in Code section 501(c)(3), donors may not deduct contributions to you under Code section 170. You must file federal income tax returns on the form and for the years listed above within 30 days of this letter, unless you request an extension of time to file.

We will make this letter and our proposed adverse determination letter available for public inspection under Code section 6110, after deleting certain identifying information. Please read the enclosed Notice 437, *Notice of Intention to Disclose*, and review the two attached letters that show our proposed deletions. If you disagree with our proposed deletions, you should follow the instructions in Notice 437. If you agree with our deletions, you do not need to take any further action.

Letter 4038(CG) (11-2005)
Catalog Number 47632S

In accordance with Code section 6104(c), we will notify the appropriate State officials of our determination by sending them a copy of this final letter and the proposed adverse letter. You should contact your State officials if you have any questions about how this determination may affect your State responsibilities and requirements.

If you have any questions about this letter, please contact the person whose name and telephone number are shown in the heading of this letter. If you have any questions about your federal income tax status and responsibilities, please contact IRS Customer Service at 1-800-829-1040 or the IRS Customer Service number for businesses, 1-800-829-4933. The IRS Customer Service number for people with hearing impairments is 1-800-829-4059.

Sincerely,

Lois Lerner
Director, Exempt Organizations

Enclosure
Notice 437
Redacted Proposed Adverse Determination Letter
Redacted Final Adverse Determination Letter



**DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224**

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Date: November 2, 2011

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

LEGEND:

B = individual
C = individual
M= foundation
N= foundation
P= business
Q = date
R = state
S = business

UIL:

501.32-00
501.33-00

Dear

We have considered your application for recognition of exemption from federal income tax under Internal Revenue Code section 501(a). Based on the information provided, we have concluded that you do not qualify for exemption under Code section 501(c)(3). The basis for our conclusion is set forth below.

Issues

Will your net earnings inure to the benefit of any private shareholder or individual? Yes, for the reasons described below.

Were you formed to benefit private rather than public interests? Yes, for the reasons stated below.

Letter 4036 (CG) (11-2005)
Catalog Number 47630W

Facts

You were formed as a nonprofit corporation in R on Q. Your Articles of Incorporation state you were formed exclusively for public and charitable purposes within the meaning of Section 501(c)(3), Internal Revenue Code, more specifically, for scientific research and education.

Your Board of Directors consists of B, C, and three other individuals. B and C are married. Both B and C will be compensated for their work with you, at first, on an hourly wage, eventually becoming salaried. B will oversee your entire operation, will develop, test and train individuals in his methods. B and C are the only board members identified on your web site.

B teaches methods of brainwave therapy and EEG (electroencephalogram) therapy. He has a private therapy practice in R, called the N. B currently conducts private trainings and produces products for training in ERT and EEG hypnotherapy practices. He also entertains on television and in stage show arenas, under the corporate name of P. B will continue to conduct these activities through both of these for-profit organizations, N and P. B will devote 85% of his time to you and the balance of his time to the two for-profit entities of N and P.

The activities conducted by N and P and fall under the category of general hypnosis therapy, where B sees a client normally for a variety of ailments, including alcoholism, drug addiction relief, and at risk teenager programs dedicated to providing children the ability to remain drug and alcohol free for life.

You state that you were formed to scientifically prove and document the natural healing power of the mind, providing therapists and the scientific community a measure of brainwave activity levels and how those levels correlate to the production of natural chemicals in the body. "The only reason to be seeking non-profit status for this entity is to gain funding to prove scientifically how these techniques work".

Your function will be to scientifically test the methods of healing developed by B, continuing the scientific research of B previously conducted under S. In fact, B's past activities and development of advanced studies in neurophysiological therapy and testing are the basis for your present and future activities. B has been practicing for over 25 years and has personally funded testing and research in improving brainwave therapy. B conducts private therapy sessions in the field at his private practice in R, offers courses to educate others on the practice of hypnosis, and teaches brainwave and emotional replacement therapy to interested students. B has authored books on hypnotism and is constantly working on methods to achieve healing levels of brainwave activity through various techniques and also developed a model for measuring brainwave levels on the Hertz scale. B has trained hundreds of students and therapists

in brainwave therapy and is currently teaching courses in the United States and abroad, and per your web site, will be offering an S training course on B's methods of emotion therapy. B has been conducting these activities over the years through his companies N, P and S.

Your activities will include testing of brainwave frequencies and amplitudes of the mind and the healing power of naturally generated chemicals, conducting research in EEG processes including altering brainwave states. Research will document the physical and mental induction techniques needed to produce certain brainwave levels. You will document the effects of these frequencies and amplitudes and the changes in natural mind chemicals created during therapy processes. Testing will be done on paid subjects suffering from disorders such as anxiety, chemical dependencies, obesity and PTSD, to name a few. Most patients will hear of your studies through advertising such as TV and radio. You hope to obtain documented evidence of the healing power of the minds using various brainwave levels and the natural production of beneficial chemicals at those levels. You contend the therapy to be conducted will study the effectiveness of longer term session series and the ability to overcome extremely difficult issues in life that are illusive to other therapy programs. This will allow for improvements to current cures as well as potentially lead to new cures. You will offer training to therapists to learn these methods. You have not secured a facility yet as a location where these studies will be done.

You have outlined three studies you intend on initially conducting with the main areas of concentration on those suffering from the above disorders as well as biological problems. B, therapists trained in B's methods, an overseeing physician and a psychologist or psychiatrist, if needed, will conduct activities. The physician is a member of your board and will contract for services when necessary.

Any findings, studies or documentation will remain in your sole possession, but you have indicated results will be used to further cures and teach people how to use their mind for natural healing. You did not indicate how these results or findings would be distributed to the medical or scientific community or to the public at large.

The treatment you perform is not funded through your clients' insurance plans, as is the case with N and P. For this reason it is not feasible to run these tests through any for profit operation due to the limited test subjects you could see. Additionally, since you will not be producing any form of patent, pill or tangible commodity, a for profit would therefore not be able to afford these types of studies. As a result, you were formed to seek tax deductible donations to fund your programs and activities, citing the need for a facility and funding for appropriate studies to test and prove these methods. Once appropriate treatments are established, you will offer help to less advantaged individuals in need of treatment.

Law

Section 501(c)(3) of the Internal Revenue Code of 1986 (the "Code") provides for the exemption from federal income tax of corporations organized and operated exclusively for charitable and educational purposes, no part of the net earnings which inures to the benefit of any private shareholder or individual.

Treasury Regulation 1.501(c)(3)-1(c)(2) provides that an organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals.

Treasury Regulation 1.501(c)(3)-1(d)(1)(ii) provides that an organization is not organized or operated exclusively for one or more of the purposes specified in subdivision (i) of this subparagraph unless it serves a public rather than a private interest. Thus, to meet the requirement of this subdivision, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.

Revenue Ruling 69-526 shows that a nonprofit organization formed by a group of physicians specializing in heart disease to research the cause and to publish treatments of heart defects qualifies for exemption under section 501(c)(3) of the Code. Patients are referred to the organization by physicians and welfare agencies when it appears that their condition merits special study and evaluation. Each patient is first examined to ascertain whether his condition falls within the scope of the organization's research goals.

In Rev. Rul. 69-632, 1969-2 C.B. 120, a nonprofit organization composed of members of a particular industry to develop new and improved uses for existing products of the industry is not exempt under section 501(c)(3) of the Code. The association's members select research projects in order to increase their sales by creating new uses and markets for their product. The primary purpose of the association's research is to serve the private interests of its creators, rather than the public interest.

In Church by Mail, Inc. v. Commissioner, T.C. Memo 1984-349, aff'd 765 F. 2d 1387 (9th Cir. 1985), the Court affirmed a Tax Court decision. Church by Mail sent out sermons in numerous mailings. This required a great deal of printing services. A for-profit company, controlled by the same ministers, provided the printing and the mailing. The services were provided under two contracts. The contracts were signed by the two ministers for both the organization and the for-profit company. The organization's business comprised two-thirds of the overall business done by the for-profit company. The court determined that there was ample evidence in the record to support the finding that the organization was operated for the substantial non-exempt purpose of providing a market

for the services of the for-profit company.

In International Postgraduate Medical Foundation v. Commissioner, T.C. Memo 1989-36, the court found an organization that ran tours aimed at doctors and their families was operated to benefit the private interests of an individual who controlled the organization and a for-profit travel agency (H&C Tours). The organization used the H&C Tours exclusively for all travel arrangements. There was no evidence that the organization solicited competitive bids from any travel agency for travel arrangements for its tours other than H&C Tours. The court found that a substantial purpose of the organization's operations was to increase the income of H&C Tours. The president of H&C Tours controlled the organization and exercised that control for the benefit of H&C Tours. Moreover, the administrative record supported the finding that the organization was formed to obtain customers for H&C Tours.

Application of Law

Based on our analysis you do not satisfy the operational requirements of the Code and Regulations to be recognized as exempt under section 501(c)(3) of the Code. Your income will inure to insiders and your operations will result in impermissible private benefit. Moreover, you have not shown that you are formed exclusively for an exempt purpose under section 501(c)(3) of the Code. Specifically, you were formed for the purpose of expanding the private practice and supporting the medical methods of B.

Section 1.501(c)(3)-1(c)(2) of the Regulations provides an organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals. By forming this entity to conduct research that otherwise would have been done by N and P, or by B himself, you are supplementing the expenses of those entities. Funds being used by you for research activities attributable to B, and B's companies, N and P, are serving direct personal interests. Further, you are creating an additional pool of services not covered by private insurance funding but rather through gifts, grants, and contributions. Patients are being subsidized for treatment, normally provided at a cost through N and P, and B is compensated for his services as a result. As N and P are owned and operated by B, and because B is an insider, this is inurement. Inurement in any form disqualifies an organization from exemption.

Section 1.501(c)(3)-1(d)(1)(iii) of the Regulations state an organization must serve a public rather than a private interest and not be organized for the benefit of designated individuals. You have stated your function will be to scientifically test the methods of healing developed by B. The only reason to be seeking non profit status is to gain funding to prove scientifically how these techniques work. This demonstrates you have

been formed to further private interests, here, the career work of B. Your research and testing efforts are aimed at validating the work of B and having these techniques gain acceptance into the mainstream medical community. You have indicated this will lead to better cures but have provided no details as to how results will be disseminated to the public, instead indicating that all results will remain your property. While there will be some public benefit served by helping and treating afflicted patients the reason you were formed was to test the methods of B, not to generate research results to benefit the scientific or medical community at large. For these reasons you are serving primarily private, rather than public, interests and do not qualify for exemption.

You differ from the organization in Revenue Ruling 69-526 in that there were multiple doctors involved in the creation of the study rather than one individual, in your case, B. Whereas you have made no indication as to how testing or research results would be disseminated the organization in the ruling had results that were made public through publication in professional journals, lectures, and film strips. Any personal benefit derived by the physician-creators did not lessen the public benefits flowing from the organization's operations whereas in your situation the personal benefits derived from this work will outweigh any public benefit. Patients in that case were referred to the organization as being recognized as in need, whereas you are advertising the study to anyone who wants to participate and receive payment.

The organization in Rev. Rul. 69-632 was denied exemption as the primary purpose of its research was to serve the interests of its creators, rather than the public. Members of the organization selected research projects to increase sales by creating new uses and markets for their product. You are similar in that your research is selected and based on work currently performed by for profit practices run by your members, in this case, B and indirectly, his wife C. The studies you intend on conducting are tailored on the methods created and used by B at his practices with the goal of proving how these techniques are effective. As you have stated, B's past activities of advanced studies in neurophysiological therapy and testing are the basis for your present and future activities. Your function will be to scientifically test the methods of healing developed by B. You have been formed to benefit your creator and not the public at large.

You are similar to the organization denied exemption in Church by Mail because you are operated for the substantial non-exempt purpose of providing a market for the services of N and P. Validation of these techniques through research will enable the businesses of N and P to directly benefit. This is research that you have admitted cannot be done by a for profit entity due to cost. Any results generated will directly benefit N and P as they are offering the same treatments you are testing while at the same time saving the cost of research and testing. B's control over you provides him with the ability to test methods that are used by N and P while being compensated for performing the testing at the same time. These benefits constitute inurement, which precludes exemption under section 501(c)(3) of the Code.

You are also similar to International Postgraduate Medical Foundation, because you are operated to benefit the private interests of an individual (B) who controls you as well as N and P. You have mentioned no other entities who offer these types of treatments, or collaboration with any other facilities or therapists in this field. All testing is based on past work done by B. By testing exclusively on B's methods you further his personal interests as well as the business interests of N and P. You are operated to benefit the private interests of an individual and subsequently two for-profit travel entities and for these reasons do not qualify.

Applicant's Position

You have indicated you differ from the for profit entities of N and P by offering free services, in fact, paying people to take part. You will provide many more therapy sessions than N and P enabling you to demonstrate the effectiveness of your research. You have set out to gain funding to prove how these techniques work which will mean that more people will accept this type of therapy unleashing the talents and breaking down the road blocks that hold so many back, teaching people how to take charge of their own lives.

Service Response to Applicant's Position

While treatment of an individual can provide a health benefit to qualify for exemption as a scientific research organization it must be shown how research and results are beneficial to the public at large rather than for private interests. The primary beneficiary of your research and testing results will be B, due to his background and current businesses, rather than the general public. Any public benefit is incidental to the private benefit bestowed on B.

Conclusion

You were formed to further the private interests of B by performing research and testing of his treatment methods. This serves a private, rather than a public, interest. Additionally, due to the compensation of B and C and increased exposure of B's practices, N and P, inurement is present. You fail the operational test as you cannot establish operations are exclusively educational or scientific and will not benefit insiders, directly or indirectly, in a more than substantial manner. Accordingly, you do not qualify for exemption under Section 501(c)(3).

You have the right to file a protest if you believe this determination is incorrect. To protest, you must submit a statement of your views and fully explain your reasoning. You must submit the statement, signed by one of your officers, within 30 days from the date of this letter. We will consider your statement and decide if the information affects

our determination. If your statement does not provide a basis to reconsider our determination, we will forward your case to our Appeals Office. You can find more information about the role of the Appeals Office in Publication 892, *Exempt Organization Appeal Procedures for Unagreed Issues*.

Types of information that should be included in your appeal can be found on page 2 of Publication 892, under the heading "Regional Office Appeal". The statement of facts (item 4) must be accompanied by the following declaration:

"Under penalties of perjury, I declare that I have examined the statement of facts presented in this appeal and in any accompanying schedules and statements and, to the best of my knowledge and belief, they are true, correct, and complete."

The declaration must be signed by an officer or trustee of the organization who has personal knowledge of the facts.

Your appeal will be considered incomplete without this statement.

If an organization's representative submits the appeal, a substitute declaration must be included stating that the representative prepared the appeal and accompanying documents; and whether the representative knows personally that the statements of facts contained in the appeal and accompanying documents are true and correct.

An attorney, certified public accountant, or an individual enrolled to practice before the Internal Revenue Service may represent you during the appeal process. If you want representation during the appeal process, you must file a proper power of attorney, Form 2848, *Power of Attorney and Declaration of Representative*, if you have not already done so. You can find more information about representation in Publication 947, *Practice Before the IRS and Power of Attorney*. All forms and publications mentioned in this letter can be found at www.irs.gov, Forms and Publications.

If you do not file a protest within 30 days, you will not be able to file a suit for declaratory judgment in court because the Internal Revenue Service (IRS) will consider the failure to appeal as a failure to exhaust available administrative remedies. Code section 7428(b)(2) provides, in part, that a declaratory judgment or decree shall not be issued in any proceeding unless the Tax Court, the United States Court of Federal Claims, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted all of the administrative remedies available to it within the IRS.

If you do not intend to protest this determination, you do not need to take any further action. If we do not hear from you within 30 days, we will issue a final adverse

determination letter. That letter will provide information about filing tax returns and other matters.

Please send your protest statement, Form 2848, and any supporting documents to the applicable address:

Mail to:

Internal Revenue Service
EO Determinations Quality Assurance
Room 7-008
P.O. Box 2508
Cincinnati, OH 45201

Deliver to:

Internal Revenue Service
EO Determinations Quality Assurance
550 Main Street, Room 7-008
Cincinnati, OH 45202

You may fax your statement using the fax number shown in the heading of this letter. If you fax your statement, please call the person identified in the heading of this letter to confirm that he or she received your fax.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

Lois G. Lerner
Director, Exempt Organizations

Enclosure, Publication 892